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DAVID A. GUERRA
INTERNATIONAL PATENT GROUP, LLC
2025 17TH AVENUE N.W.
CALGARY AB T2M 0S7
CANADA

In re Application of :
WIERZBICKI, Stanislaw John, et al. :
Application No. 10/526,910 :
PCT No.: PCT/AU2003/001135 :
Int. Filing Date: 04 September 2003 :
Priority Date: 04 September 2002 :
Attorney Docket No.: AP049-05 :
For: SOCK PEG :

DECISION

ON PETITION UNDER

37 CFR 1.8

This is a decision on applicants' "Response to Notification of Abandonment," filed on 24 September 2008.

BACKGROUND

On 08 December 2005, the Office mailed Notification of Insufficient Fees (Form PCT/DO/EO/923) which required payment of the fee for late filing of the search fee, examination fee or oath or declaration and additional claim fees. The Notification set a two (2) month period for response.

On 07 January 2008 and 29 August 2008, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909), indicating that the application went abandoned for failure to timely reply to the Notification of Insufficient Fees.

On 24 September 2008, applicants filed this petition claiming that applicants had timely responded to the Notification via facsimile on 05 January 2006, enclosing a copy of the response and a petition to revive under 37 CFR 1.137(b).

DISCUSSION

Petition to Withdraw Holding of Abandonment

Applicants claim to have responded to the Notification of Insufficient Fees on 05 January 2006, but the facsimile transmission is not present in the file. However, 37 CFR 1.8(b) states, in part:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of correspondence, or after the

application is held to be abandoned, or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Items (1) and (2) have been satisfied. Applicant filed the petition promptly after the mailing of the Notification of Abandonment. Applicant supplied a copy of the submission and the certificate of facsimile transmission.

Item (3) has not been satisfied. Applicant has not furnished a statement based on first hand knowledge or to the satisfaction of the Director that the correspondence was sent. In fact, the statement indicates that an error may have occurred in transmission. Applicant has not furnished their transmission report showing that the transmission was successful.

As applicant has not established the 05 January 2006 transmission, the Office will address the petition under 37 CFR 1.137(b) on the merits.

Petition Under 37 CFR 1.137(b)

Applicant states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional, as required by 37 CFR 1.137(b)(3). The appropriate reply and petition fee have been submitted. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.8 to withdraw the holding of abandonment is **DISMISSED**, without prejudice. Applicants' petition under 37 CFR 1.137(b) is **GRANTED**.

A request for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed, should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being referred to the National Phase Processing Branch of the Office of Patent Application Processing for further action consistent with this decision. The application has a 35 USC 371(c)(1), (c)(2) and (c)(4) date of 24 September 2008.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: (571) 272-3292
Facsimile: (571) 273-0459